

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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DEC 29 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 98-189
Table of Allotments,) RM-9377
FM Broadcast Stations.)
(Manzanita, Oregon))

REPLY COMMENTS

Broad Spectrum Communications, Inc. ("BSCI"), by its attorneys and pursuant to Sections 1.415 and 1.420 of the rules of the Federal Communications Commission ("FCC" or "Commission"), 47 C.F.R. §§ 1.415, 1.420 (1997), hereby submits its reply comments in response to the comments filed by John L. Zolkoske ("Petitioner")¹ in the above-captioned proceeding to amend the FM Table of Allotments.

On October 23, 1998, the Mass Media Bureau ("Bureau") released a Notice of Proposed Rule Making ("NPRM") in the above-captioned proceeding,² in which the Bureau proposed to allocate Channel 235A to Manzanita, Oregon, pursuant to a petition for rule making filed by Petitioner requesting such allocation ("Zolkoske Petition").³

¹ Comments Made by John L. Zolkoske (Proponent) Regarding RM-9377: Proposed Rule-Making to Amend the Table of Allotment to Add Channel 235A (94.9 mHz) to Manzanita, Oregon, MM Docket No. 98-189, RM-9377 (date-stamped "Received" by FCC Mail Room on December 17, 1998).

² See *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations, (Manzanita, Oregon)*, MM Docket No. 98-189, RM-9377, Notice of Proposed Rule Making (Allocations Branch, Mass Media Bur. Oct. 23, 1998).

³ Petition Made by John L. Zolkoske for Rule-Making to Amend the Table of FM Allotment to Add Channel 235A (94.9 mHz) to Manzanita, Oregon, MM Docket No. 98-189, RM-9377 (filed Aug. 31, 1998).

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Pursuant to the NPRM, BSCI, the licensee of Station KCBZ(FM), Channel 243A, Cannon Beach, Oregon, submitted a counterproposal pursuant to which KCBZ's licensed facilities would be modified by substituting Channel 235C3 for Channel 243A at Cannon Beach and adding Channel 242A at Bay City, as that community's first local aural service, provided there are no other timely filed expressions of interest for Channel 235C3.⁴

The FCC Mail Room received Petitioner's comments reiterating his interest in applying for Channel 235A in Manzanita on December 17, 1998, three days past the deadline established by the NPRM for the filing of comments.⁵ Pursuant to Commission precedent, the Commission should dismiss the Zolkoske Petition for failure of Petitioner to timely file an expression of interest.⁶ In the context of allotment rule makings, the Commission has emphasized the importance of setting forth a strict policy requiring adherence to filing deadlines.⁷ The FCC does not consider untimely expressions of interest in the face of conflicting proposals.⁸ In fact, the Commission has dismissed a rule making petition to allocate an FM channel, even when it resulted in the denial of first

⁴ BSCI filed its "Counterproposal to Petition For Rule Making to Amend the Table of Allotments" with the Commission on December 14, 1998.

⁵ A copy of Petitioner's comments showing the FCC Mail Room's date stamp of December 17, 1998 is attached hereto as Attachment A.

⁶ *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Santa Isabel, Puerto Rico and Christiansted, Virgin Islands)*, 3 FCC Rcd 2336, 2337-8 (1988), *aff'd Amor Family Broadcasting Group v. FCC*, 918 F.2d 960 (D.C. Cir. 1990) (holding that the FCC may dismiss a petition to amend the FM table of allotments for failure of petitioner to timely file comments reiterating its expression of interest in the allotment).

⁷ *Santa Isabel, Puerto Rico*, 3 FCC Rcd at 2337.

⁸ *Id.*

local aural service to a community.⁹ In the instant contested case, Petitioner filed his comments late, with no explanation or request that the Commission accept his late-filed comments. Furthermore, a dismissal of the Zolkoske Petition would not result in the denial of first local aural service, but rather would clear the way for the Commission to grant BSCI's counterproposal which would result in the allocation of first local aural service to a larger community than that proposed by Petitioner.

Even if the Commission addresses the merits of Petitioner's proposal, BSCI's counterproposal is superior to Petitioner's proposal. According to Petitioner, Channel 235A at Manzanita will be that community's first radio station, serving a small tourist community with a population of 513.¹⁰ BSCI's proposal will also result in the allocation of a community's first local aural service, but it will also serve a much greater portion of the population. The combined population served by the current allocation in Cannon Beach (assuming a full power, fully spaced Class A station) and by the Zolkoske proposal, if granted, would be 34,780 persons.¹¹ The combined population that will be served by a grant of BSCI's counterproposal is 59,095 persons.

⁹ *Id.*; see *Amor Family Broadcasting Group*, 918 F.2d at 963 (noting that while the provision of first local service is a Commission priority, it cannot be sought at the expense of procedural requirements).

¹⁰ Zolkoske Petition at 1. All population figures herein are taken from the 1990 U.S. Census Report.

¹¹ The population coverage calculations set forth herein are based on the allocation coordinates of each channel.

As BSCI explained in its counterproposal, KCBZ, operating on the Class C3 channel as proposed, would be able to serve 38,365 persons, while a full power, fully spaced Class A station at Cannon Beach would provide service to only 20,158 persons.¹² With the substitution of Channel 235C3 at Cannon Beach, Channel 242A can be allocated to Bay City, Oregon, thereby providing that community with its first local aural station. A Class A station at Bay City would serve 20,730 persons. The same class station at Manzanita would serve only 14,622 persons.

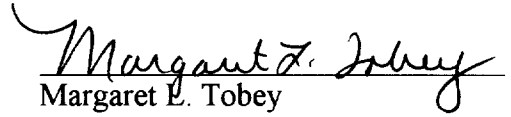
For the foregoing reasons, BSCI requests that the Table of Allotments be amended to specify that Channel 235C3 be allocated to Cannon Beach and Channel 242A be allocated to Bay City as that community's first local aural station. Moreover, BSCI requests that the licensed facilities of Station KCBZ, Cannon Beach, be modified to operate on Channel 235C3, provided that no competing expressions of interest are submitted to the Commission.¹³ If authorized to operate on Channel 235C3, BSCI will

¹² A Class C3 station cannot be allocated to Manzanita on Channel 235.

¹³ If competing expressions of interest for the proposed new Cannon Beach allotment are submitted and the Commission determines that there are no additional equivalent channels available, BSCI will withdraw this counterproposal and maintain its licensed facilities on Channel 243A at Cannon Beach.

promptly construct and begin operation on the improved facilities. BSCI also will apply for Channel 242A at Bay City if that channel is allocated as proposed herein.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Margaret E. Tobey", is written over a horizontal line.

Margaret E. Tobey
Kimberly D. Wheeler
Morrison & Foerster LLP
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Counsel for Broad Spectrum
Communications, Inc.

December 29, 1998

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DEC 17 1998

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:
MM Docket No. 98-189,
RM-9377 Table of Allotments, FM Broadcast Stations (Manzanita, OR)

To: Federal Communications Commission (FCC)
Date: December 5, 1998

Comments Made by John L. Zolkoske (Proponent)
Regarding RM-9377: Proposed Rule-Making to Amend
the Table of FM Allotment to Add
Channel 235A (94.9mHz) to Manzanita, Oregon.

Respectfully submitted here within are comments regarding RM-9377, a proposed rule-making to amend the table of FM allotments to add the channel 235 (94.9 mHz) with service class A to the community of Manzanita, Oregon.

I, John L. Zolkoske, the original proponent of the petition, hereby reiterate my interest in applying for the proposed facility if authorized as stated in the original proposal. I intend to apply for the proposed allotment if it is opened for applications and construct the facility in a timely fashion if issued a construction permit.

If permitted, this allotment will be the first aural service assigned to the community of Manzanita, Oregon. Manzanita is an incorporated community in the state of Oregon with a population of 513*. Manzanita is located in Tillamook County, population 21570.* There are at least 2000 full-time residents in and near Manzanita, including residents of the communities of Nehalem (pop. 232), Wheeler (pop. 335), and Rockaway Beach (pop. 970)*. There are also many tourists and vacationers that spend time in this coastal area. Manzanita itself is an established community of homes, businesses, schools, and offices. It has a bank, a post office, and a number of retail establishments.

Tillamook County is in an area of extremely steep terrain, and it is very difficult for signals to enter the Manzanita area. Nehalem Bay, which Manzanita sits near the mouth of, is surrounded by steep slopes rising hundreds of feet from the waters of the bay. Manzanita sits on the shores of the Pacific Ocean, and near-vertical cliffs rise from the shore. This makes reception of FM signals from points north and east nearly impossible. Reception from the south is difficult. The applicant notes that given the steep terrain and lack of radio signals entering the area, this allocation would serve a vital public safety interest in disseminating information should an emergency arise.

For all above stated reasons, It is believed by the petitioner, John L. Zolkoske, that the citizenry of Manzanita, Oregon and surrounding areas would be served substantially from establishment of a broadcast facility there. Since this area has no other local broadcast service, the petitioner believes this proposal is in the greatest public interest.

Therefore, it is requested that the FM Table of Assignments be amended to add channel 28.4 to Minamata, Oregon. It is the opinion of the proponent, that authorization of this service would constitute a proper use of broadcast spectrum in the public interest and necessity.

For more information or correspondence regarding these comments, the petitioner may be contacted at the following address:

John L. Zolkoos
915 N. Douglas Ave.,
Stayton, OR 97383
Ph: 503-769-2886

To the best of my knowledge, the information contained in this petition is accurate.

Signed this 5th day of December, 1996:


John L. Zolkoos

* From U.S. Census Bureau, 1990 data.

** From U.S. Census Bureau, USA Counties 1996 (1995 data)

CERTIFICATE OF SERVICE

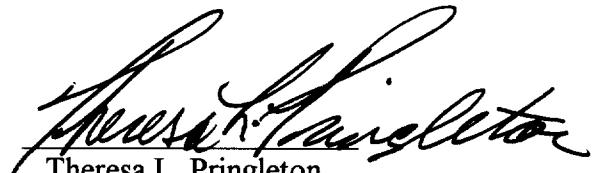
I, Theresa L. Pringleton, do hereby certify that the foregoing **Reply Comments** were mailed on this 29th day of December, via first class U.S. mail to the following:

John L. Zolkoske
915 N. Douglas Avenue
Stayton, OR 97383

Magalie Roman Salas*
Secretary
Federal Communications Commission
445 12th Street, S.W. , TW-A325
Washington, D.C. 20554

Leslie Shapiro*
Mass Media Bureau
Allocations Branch
Federal Communications Commission
2000 M Street, N.W. - Room 536
Washington, D.C. 20554

* By hand


Theresa L. Pringleton